IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1746 OF 2006.

Vyankat Pandurang Khadge ..Petitioner

versus

The State of Maharashtra
& Others ..Respondents

Mr.H.S.Venegavkar for the Petitioner

Mr.A.S.Gadkari APP for the State

Coram : S.B.Mhase &
S.R.Sathe, JJ.
Dated : 29th November, 2006

P.C.

1. Heard the learned Counsel. As against the petition a criminal case No.510 of 80 is pending before the JMFC Koregaon, District Satara. In the said case the petitioner is charged with the offence under Section 323, 452 and 504 of I.P.C. The learned Counsel makes a grievance that the case was settled between the complainant Shantabai Bhagwan Kamble and the petitioner and the consent terms were filed before the Magistrate, and therefore the case should have been disposed of by the Magistrate, but it was kept on dormant file and after a period of 20 years now the action under Section 82 has been commenced as against the petitioner since the petitioner is found absconding. He states that the

petitioner was not in fact absconding, but was in service of Indian Army and therefore the action under Section 82 is important. He has also produced the affidavit of Shantabai Bhagwan Kamble stating that she has no grievance as against the petitioner. We also found that on 18.8.2006 when this matter appeared before the Division Bench consisting of J.N.Patel & Roshan Dalvi JJ., the Court recorded that the complainant is present with her husband and states that she does not want to prosecute her case against the petitioner accused and therefore an affidavit is asked for. In consonance of the said direction, the petitioner has produced the affidavit of the said Shantabai Bhagwan Kamble.

2. It is further pertinent to note that earlier to this petition, the petitioner had filed the petition No.1683 of 2004 which was placed before the single judge of this Court, (Justice R.S.Mohite). That petition was disposed of with an order " Heard advocate for the petitioner. The advocate for the petitioner states that the complainant does not want to proceed with the matter and he wants to file an application for compounding the case in the lower court. With liberty to apply for compounding the case before the trial court, petition is rejected".

Thus, what we find is that the earlier petition made for the same relief has been rejected by this Court in view of the statement made by the petitioner's counsel that he wants to withdraw the petition with liberty to approach the Magistrate. Under the circumstances, it will be inappropriate to entertain the petition. Therefore, we refrain to entertain the petition. The petition is hereby rejected.

. However, the Magistrate may take into consideration the fact that the matter has been settled between the parties and if the accused appears before Magistrate, the Magistrate shall take into consideration this aspect and shall dispose of the case in accordance to law.

(S.R.Sathe, J.) **(S.B.Mhase, J.)**